

Hon. Ann A. Scott Timmer, Chair
Attorney Regulation Advisory Committee
Arizona Supreme Court
1501 W. Washington St.
Phoenix, AZ 85007

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-18-0024
)	
PETITION TO AMEND)	Comment of the Attorney
RULE 64(f)(1)(B))	Regulation Advisory Committee
)	
Arizona Rules of the Supreme Court)	
)	
)	

The Attorney Regulation Advisory Committee (“ARC”) respectfully recommends that the Arizona Supreme Court grant Rule Change Petition R-18-0024 (the “Petition”) as proposed. In support of its recommendation, ARC provides the following comments and observations regarding the Petition:

1. The Petition would make semantic changes to Rule 64(f)(1)(B), Arizona Rules of the Supreme Court, by striking the current reference to “findings” by the State Bar of Arizona as a condition precedent to an application for reinstatement for petitioners who have been summarily suspended for administrative deficiencies (i.e., failure to meet MCLE requirements or to pay State Bar dues) for more than two years. The proposed semantic changes, as Petitioner states, would eliminate an

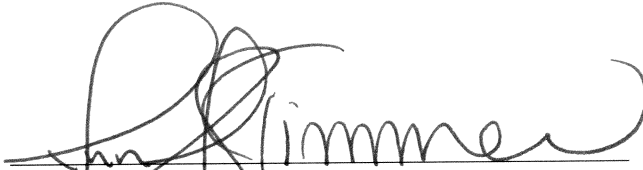
inaccurate description in the current rule regarding the State Bar's authority to make "findings."

2. More importantly, ARC believes the proposed rule change will align Rule 64(f)(1)(B) with other rules that control reinstatements to practice law by recognizing that any applicant for reinstatement has the burden of proving eligibility for readmission by clear and convincing evidence. *See* Rule 64(a), Ariz.R.Sup.Ct. Because an applicant for readmission has the burden of proof, there is no reason for any preliminary "findings."

3. Specifically, the Petition, if granted, would continue to place on an applicant for reinstatement the burden of proving, in part, the applicant's "fitness" to practice law, as well as "competence," under Rule 65(b)(2). Thus, if an applicant's reason for having failed to apply for reinstatement in less than two years from the date of summary suspension is in any way related to the applicant's "fitness" or "competence" to practice, the applicant's burden to prove "fitness" and "competence" by clear and convincing evidence would apply. In such cases, the applicant would be required to prove rehabilitation from the cause of the applicant's delay in seeking reinstatement, the State Bar would have an opportunity to present evidence on that issue, and a hearing panel would decide the question, all in the same manner, and with the same burden of proof, as in any other reinstatement case.

4. Finally, ARC believes, based on informal inquiry, that the Petition, if granted, would have little or no effect on the process or outcome of cases that proceed under Rule 64(f)(1)(B). Such cases appear to be relatively rare, and the State Bar has not, to date, issued any “findings” in those cases that have been adverse to an applicant.

RESPECTFULLY SUBMITTED this 30th day of April, 2019.



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